



**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHAWN VAN ASDALE, an individual,
and LENA VAN ASDALE, an individual
Plaintiffs,

vs.

INTERNATIONAL GAME,
TECHNOLOGY, a Nevada corporation,
Defendant.

3:04-cv-00703-RAM

**MEMORANDUM DECISION AND
ORDER**

Before the court is Plaintiffs' Motion for Attorneys' Fees, Costs, and Prejudgment Interest. (*See* Doc. # 323-327.)¹ Defendant opposed (Doc. #339), and Plaintiffs replied (Doc. #344). At the court's request (*see* Doc. #351), Plaintiffs supplemented their motion. (Doc. #352.) Defendant filed a response to the supplement (Doc. #353) and Plaintiffs move to strike the response (Doc. #354). After a thorough review, the court grants Plaintiffs' Motion for Attorneys' Fees, Costs, and Prejudgment Interest (Doc. #323), as outlined below. The court denies Plaintiffs' Motion to Strike (Doc. #354).

I. BACKGROUND

Plaintiffs Shawn Van Asdale and Lena Van Asdale (Plaintiffs), husband and wife, are former corporate counsel for Defendant International Game Technology, a Nevada corporation (IGT). (Pls.' Compl. (Doc. # 3).) IGT specializes in the design, development, manufacturing, distribution and sale of computerized gaming machines and systems products. (IGT's Mot. for Summ. J. (Doc. # 173) 6.) Plaintiffs filed their Complaint against IGT on December 1, 2004,

¹ Refers to court's docket number.

1 asserting a claim for whistleblower protection relief under the Sarbanes-Oxley Act, 18 U.S.C.
 2 § 1514A (SOX), and state law claims for tortious discharge, intentional interference with
 3 contractual relations, retaliation, and intentional infliction of emotional distress. (Doc. #3.)
 4 Prior to filing the Complaint in district court, Plaintiffs filed and voluntarily dismissed a formal
 5 complaint before the Secretary of Labor. (Doc. # 3 at ¶ 60.)

6 IGT filed a motion for summary judgment on November 22, 2006. (Doc. # 173.) On
 7 June 13, 2007, the court granted summary judgment as to Plaintiffs' SOX claim, and declined
 8 to retain jurisdiction over the remaining state law claims. (Doc. # 197.) Plaintiffs appealed,
 9 and the United States Court of Appeals for the Ninth Circuit issued an opinion finding that
 10 Plaintiffs raised a genuine issue of material fact regarding the cause of their terminations.
 11 (Doc. # 212, 220.) The Ninth Circuit reversed the grant of summary judgment as to the SOX
 12 claim, vacated dismissal of the state law claims, and remanded the matter to the district court
 13 to address, in the first instance, IGT's motion for summary judgment as to the state law claims.
 14 (Doc. # 220.) On remand, the court issued an order granting summary judgment as to
 15 Plaintiffs' state law claims and denying summary judgment as to application of the after-
 16 acquired evidence doctrine. (Doc. # 235.)

17 A jury trial was held, and a verdict was returned in favor of Plaintiffs, awarding actual
 18 damages in the amount of \$955,597 to Shawn Van Asdale and \$1,270,303 to Lena Van Asdale.
 19 (Doc. # 316-317.)² Judgment was entered on February 9, 2011. (Doc. # 321.) Plaintiffs filed
 20 the instant Motion for Attorney Fees, Costs, and Prejudgment Interest on February 17, 2011,
 21 and IGT opposed.

22 II. LEGAL STANDARD

23 SOX includes protection for whistleblower employees of publicly-traded companies who
 24 have suffered adverse-employment action for reporting or cooperating in the investigation of
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26 ² The court initially granted IGT's motion to strike Plaintiffs' jury demand, but granted Plaintiffs'
 27 renewed jury demand after SOX was amended to add the right to a jury trial. 18 U.S.C. § 1514A(b)(2)(E). (See
 28 Doc. # 246, 268, 271-274.)

1 corporate fraud or violations of Securities and Exchange Commission rules or regulations.
 2 18 U.S.C. § 1514A(a). A whistleblower under 18 U.S.C. § 1514A has two options for seeking
 3 relief: (1) file a complaint with the Secretary of Labor; or (2) if the Secretary has not issued a
 4 final decision within 180 days, bring an action in the district court. 18 U.S.C. § 1514A(b)(1).

5 "An employee prevailing in any action under subsection (b)(1) shall be entitled to all
 6 relief necessary to make the employee whole." 18 U.S.C. § 1514A(c). This relief "shall include--
 7 (A) reinstatement with the same seniority status that the employee would have had, but for
 8 the discrimination; (B) the amount of back pay, with interest; and (C) compensation for any
 9 special damages sustained as a result of the discrimination, including litigation costs, expert
 10 witness fees, and reasonable attorney fees." *Id.*

11 Once a party has established that it is entitled to an award of attorney's fees, "[i]t
 12 remains for the district court to determine what fee is 'reasonable.'" *Hensley v. Eckerhart*, 461
 13 U.S. 424, 433 (1983). Under federal law, reasonable attorney's fees are generally based on the
 14 traditional "lodestar" calculation set forth in *Hensley*. See *Fischer v. SJB-P.D. Inc.*, 214 F.3d
 15 1115, 1119 (9th Cir. 2000). First, the court must determine a reasonable fee by multiplying "the
 16 number of hours reasonably expended on the litigation" by "a reasonable hourly rate."
 17 *Hensley*, 461 U.S. at 433. Second, the court must decide whether to adjust the lodestar amount
 18 based on an evaluation of the factors articulated in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d
 19 67, 70 (9th Cir. 1975), which have not been subsumed in the lodestar calculation. See *Fischer*,
 20 214 F.3d at 1119 (citation omitted).

21 The *Kerr* factors are:

22 (1) the time and labor required, (2) the novelty and difficulty of the
 23 questions involved, (3) the skill requisite to perform the legal
 24 service properly, (4) the preclusion of other employment by the
 25 attorney due to acceptance of the case, (5) the customary fee, (6)
 26 whether the fee is fixed or contingent, (7) time limitations imposed
 27 by the client or other circumstances, (8) the amount involved and
 28 the results obtained, (9) the experience, reputation, and ability of
 the attorneys, (10) the "undesirability" of the case, (11) the nature
 and length of the professional relationship with the client, and (12)
 awards in similar cases.

Kerr, 526 F.2d at 70. Factors one through five have been subsumed in the lodestar calculation. See *Morales v. City of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996) (citations omitted). Further, the Ninth Circuit, extending *City of Burlington v. Dague*, 505 U.S. 557, 567 (1992), held that the sixth factor, whether the fee is fixed or contingent, may not be considered in the lodestar calculation. See *Davis v. City & County of San Francisco*, 976 F.2d 1536, 1549 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993). There is a strong presumption that the lodestar figure represents a reasonable fee. *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987) (internal citations omitted). However, upon considering the relevant *Kerr* factors that may bear on reasonableness, the court may adjust the award from the lodestar figure. *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006). Only in rare instances should the lodestar figure be adjusted on the basis of these considerations. *Id.* (citations omitted). "District courts [also] possess the necessary discretion to adjust the amounts awarded to address excessive and unnecessary effort expended in a manner not justified by the case." *Id.*

III. DISCUSSION

A. ATTORNEYS' FEES

1. Amount Requested

Plaintiffs request a total of \$1,237,956 in attorneys' fees. (See Doc. # 352 2.) IGT challenges the amount of Plaintiffs' request on various grounds, each of which is discussed below.

2. Reasonable Rate & *Kerr* Factors

Plaintiffs assert that a reasonable hourly rate in this case is \$450 for attorneys and \$120 for paralegals. (Doc. # 323 3.) IGT argues that Plaintiffs' counsel customarily charge \$185 per hour for attorney services and \$90 for paralegal services. (Doc. # 339 7-8, Ex. 8-9.)

In calculating the lodestar figure, reasonable hourly rates are determined by the "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895

1 (1984); *see also Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001). "The burden is on the
2 plaintiff to produce evidence that the requested rates are in line with those prevailing in the
3 community for similar services by lawyers of reasonably comparable skill, experience, and
4 reputation." *Sorenson*, 239 F.3d at 1145 (internal quotations and citation omitted). "Affidavits
5 of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and
6 rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney,
7 are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps*
8 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) (citations omitted). "The defendant may
9 introduce rebuttal evidence in support of a lower hourly rate." *Sorenson*, 239 F.3d at 1145.
10 If the fee applicant has not met its burden of establishing the reasonableness of the requested
11 rates, the court may determine the rate based on its experience and knowledge of prevailing
12 rates in the community. *See, e.g., Bademyan v. Receivable Mgmt. Servs. Corp.*, 2009 WL
13 605789 at *5 (C.D. Cal. 2009).

14 Plaintiffs submit declarations from Graham Galloway, Esq., John Echeverria, Esq., and
15 William Jeanney, Esq. (Doc. # 323 Ex. 2-4.) Each of these attorneys has more than twenty-five
16 years of experience representing plaintiffs, and each confirms \$450 is a reasonable hourly rate
17 for an attorney in this community with Ms. Piscevich's experience. (*Id.*) Plaintiffs also submit
18 the declarations of counsel, Ms. Piscevich and Mr. Lenz. (Doc. # 323 Ex. 5-6.) Ms. Piscevich
19 has forty years of litigation experience. (Doc. # 323 Ex. 5 at ¶ 1.) Mr. Lenz has nineteen years
20 of litigation experience. (Doc. # 323 Ex. 6 at ¶ 4.)

21 To rebut the requested rate, first, IGT provides Plaintiffs' motion to retax costs and fees
22 incurred in connection with IGT's motion for terminating sanctions, wherein Plaintiffs argue
23 that \$250 to \$350 is a reasonable hourly rate for a business litigation attorney in this
24 community. (Doc. # 339 Ex. 7 at 3:14-22.) Second, IGT provides declarations of Ms. Piscevich
25 and Mr. Lenz, filed in unrelated actions, asserting hourly rates of \$185 to \$175 for attorneys,
26 and \$85 to \$95 for paralegals. (Doc. # 339 Ex. 8 at ¶ 7, Ex. 9 at ¶ 9.) Third, IGT also submits
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1 affidavits of various employment attorneys in unrelated actions, with hourly rates of \$320 to
2 \$325. (Doc. # 339 Ex. 10.)

3 The court finds the declarations submitted by Mr. Galloway, Mr. Echeverria, and
4 Mr. Jeanney, are sufficient to establish that \$450 is a reasonable hourly rate for Ms. Piscevich,
5 an attorney with forty years of litigation experience. (See Doc. # 323 Ex. 2-4.) The \$185
6 attorney rate and \$90 paralegal rate suggested by IGT are Ms. Piscevich's negotiated rates for
7 medical malpractice defense actions. (Doc. # 344 5.) The prevailing rate an attorney charges
8 may vary based on the nature of the case, and it is not surprising that the rate would be higher
9 in an action involving an employment dispute, than in a medical malpractice or other insurance
10 defense matter with a negotiated rate. The court recognizes that the declarations submitted
11 by IGT are from well-respected and seasoned litigators, but they do not have the forty years
12 of litigation experience attributed to Ms. Piscevich which justifies the increase from the \$320-
13 \$325 they command to the \$450 rate requested by Ms. Piscevich.

14 The court does not believe Plaintiffs met their burden of establishing that \$450 is a
15 reasonable hourly rate for Mr. Lenz. The court recognizes that Mr. Lenz is an experienced and
16 skilled litigator, and while Ms. Piscevich maintains that Mr. Lenz is billed out at an hourly rate
17 identical to hers, Ms. Piscevich has forty years of trial experience as compared to Mr. Lenz's
18 nineteen years. (Doc. # 323 Ex. 5 at ¶ 1, Ex. 6 at ¶ 4.) In addition, the declarations submitted
19 by attorneys in the community in support of Plaintiffs' motion only reference the skill and
20 experience of Ms. Piscevich, and not that of Mr. Lenz. (Doc. # 323 Ex. 2-4.) Plaintiffs have
21 previously argued that a reasonable hourly rate for an experienced litigator in this community
22 falls in the range of \$250 to \$350. (Doc. # 339 Ex. 7 at 3:14-22.) Accordingly, the court will
23 reduce Mr. Lenz's hourly rate to \$350 for purposes of the lodestar calculation.³

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25 ³ Plaintiffs' continual reference to the number of lawyers and other professionals present
26 in court for the defense during trial, and their hourly rates, is not relevant to *Plaintiffs'* Motion for
27 Attorneys' Fees, Costs, and Prejudgment Interest. (See Doc. # 344 at 3, 9, 10, n. 21, Doc. # 344-1 at
28 ¶ 9.) Plaintiffs, as prevailing party, have the burden of establishing the reasonableness of the hourly
rates and time expended by their counsel. Defense counsel's hourly rates and hours expended on this

With respect to Ms. Fenner's time, Plaintiffs did not file any supporting documentation concerning her experience and skill to support a rate of \$450. The court concludes \$350 is a reasonable hourly rate for Ms. Fenner, based on its knowledge of prevailing rates in the community.

Plaintiffs do not provide any evidence to support the request for an hourly rate of \$120 for paralegal work. IGT submits declarations of Plaintiffs' counsel from other matters where Plaintiffs' counsel requested a rate of \$85 or \$90 for paralegal work in medical malpractice actions. (Doc. # 339 Ex. 8 at ¶ 7, Ex. 9 at ¶ 9.) As noted above, the negotiated rate in medical malpractice actions may differ from the prevailing rate in an employment matter such as the instant matter. In fact, one of the declarations submitted by IGT in support of its opposition reflects an hourly rate of \$125 for paralegals. (Doc. # 339 Ex. 10.) Therefore, the court concludes that the \$120 hourly rate for paralegal work requested by Plaintiffs is reasonable.

In sum, the court will calculate the lodestar amount based on hourly rates of \$450 for Ms. Piscevich, \$350 for Mr. Lenz and Ms. Fenner, and \$120 for paralegal work. Accordingly, the fees requested are initially reduced as follows:

Lawyer/Paralegal	Hours	Rate	Total
Piscevich	981.2	\$450	\$441,540
Lenz	1,531.7	\$350	\$536,095
Fenner	20.10	\$350	\$7,035
Stark	791.3	\$120	\$94,956
Harvel	1.2	\$120	\$144
Chambers	25.05	\$120	\$3,006
TOTAL:			\$1,082,776

The next issue that confronts the court is the fact that this case has spanned in excess of six years. The Ninth Circuit has held that the court has discretion to apply the rates in effect at the time the work was performed, or the rates in effect at the time of the fee application, but

matter are not at issue.

1 has found it is an abuse of discretion to apply market rates in effect more than two years before
2 the work was performed. *See Bell v. Clackamas County*, 341 F.3d 858, 860 (9th Cir. 2003),
3 *as amended* (citing *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir. 1997)); *Schwarz v. Secretary*
4 *of HHS*, 73 F.3d 895, 908-09 (9th Cir. 1995)); *Gates v. Deukmejian*, 987 F.2d 1392, 1406 (9th
5 Cir. 1992).

6 Plaintiffs litigated this case for nearly seven years before obtaining a jury verdict in their
7 favor. Therefore, the court will assess the fees at the current rate. *See Gates*, 987 F.2d at 1406
8 (recognizing “district courts have discretion to compensate prevailing parties for any delay in
9 the receipt of fees by awarding fees at current rather than historic rates in order to adjust for
10 inflation and loss of the use [of] funds”).

11 Finally, the court will address the remaining *Kerr* factors not subsumed in the lodestar
12 calculation in determining whether to enhance or reduce the lodestar figure. *Kerr*, 526 F.2d
13 at 70; *Fischer*, 214 F.3d at 1119. With respect to the seventh *Kerr* factor, Plaintiffs have
14 indicated that there were no time limitations imposed. (Doc. # 323 5.) As to the eighth *Kerr*
15 factor, the amount involved and results obtained, Plaintiffs point out that this case spanned
16 nearly seven years and resulted in a verdict in their favor. (*Id.*) The court addressed the ninth
17 *Kerr* factor, the experience, reputation, and ability of the attorneys, above. With respect to
18 the tenth *Kerr* factor, the “undesirability” of the case, Plaintiffs indicate this case was not
19 undesirable. (Doc. # 323 6.) As to the eleventh *Kerr* factor, the nature and length of the
20 professional relationship with the client, Plaintiffs indicate there was no previous relationship.
21 (Doc. # 323 6.) As to the twelfth and final *Kerr* factor, awards in similar cases, Plaintiffs
22 indicate there are no similar awards. (*Id.*) Considering the *Kerr* factors not subsumed in the
23 lodestar calculation, the court sees no basis for making any further enhancement or reduction.
24 In conclusion, the court calculates the initial lodestar figure at \$1,082,776.

25 3. Results Obtained

26 IGT advocates that the court consider a percentage reduction of the hours expended
27 from the time of Plaintiffs’ complaint until December 8, 2009, when the state-law claims were
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1 dismissed on summary judgment and taking into account the hours expended in litigation
 2 related to the unsuccessful claims. (Doc. # 339 13-14.) In addition, IGT points out that
 3 Plaintiffs demanded much more in settlement negotiations and at trial than they were actually
 4 awarded by the jury. (*See id.*, Ex. 1-4, 6.) As a result, IGT requests a 50% reduction in the
 5 hours expended to reflect what it perceives as Plaintiffs' limited success. (*Id.*)

6 Plaintiffs assert that an award of attorney's fees under SOX is mandatory and not
 7 discretionary. (Doc. # 344 12.) Plaintiffs contend that IGT's reliance on *Hensley* and *McCown*
 8 is misplaced because those cases only apply to attorney's fees awarded under 42 U.S.C. § 1988.
 9 (*Id.*) Plaintiffs claim their settlement demands are not relevant for purposes of determining
 10 their success at trial. (*Id.* at 14.) Ultimately, Plaintiffs take the position that all of their claims
 11 were related to their wrongful termination from IGT, and they obtained significant success
 12 at trial, so that a percentage reduction is not justified. (*Id.* at 10-12.)

13 First, while Plaintiffs take the position that fees awarded under SOX are mandatory,
 14 the statute explicitly qualifies the recovery of fees with the requirement that they be
 15 "reasonable." 18 U.S.C. § 1514A(c)(2)(C). While the mandatory language in 18 U.S.C. §
 16 1514A(c)(2)(C) may deprive the court of discretion on the propriety of awarding fees to the
 17 prevailing party, the *amount* awarded is clearly within the court's discretion because of the
 18 statute's use of the term "reasonable." *See e.g., Twin City Sportservice, Inc. v. Charles O.*
 19 *Finley & Co., Inc.*, 676 F.2d 1291, 1312-1313 (9th Cir. 1982) (finding award of fees on successful
 20 antitrust suit was mandatory, but amount of fees was up to court's discretion).

21 Second, Plaintiffs contend that *Hensley* only applies in a request for fees under 42 U.S.C.
 22 § 1988. As the Supreme Court specifically noted, "[t]he standards set forth in [*Hensley*] are
 23 generally applicable in all cases in which Congress has authorized an award of fees to a
 24 'prevailing party.'" *Hensley*, 461 U.S. at 433 n. 7. SOX awards reasonable attorney's fees to
 25 a prevailing employee. 18 U.S.C. § 1514A(c). Moreover, the Ninth Circuit has referenced
 26 *Hensley* in the context of fee requests made outside of 42 U.S.C. § 1988. *See, e.g., Nadarajah*
 27 *v. Holder*, 569 F.3d 906, 910 (9th Cir. 2009) (fee request made under the Equal Access to
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1 Justice Act (EAJA), 28 U.S.C. § 2412(d)(1)(A)); *Jankey v. Poop Deck*, 537 F.3d 1122, 1123,
2 1130-31 (9th Cir. 2008) (request for fees under Americans with Disabilities Act of 1990 (ADA),
3 42 U.S.C. §§ 12101-12213); *Park, ex rel. Park v. Anaheim Union High School Dist.*, 464 F.3d
4 1025, 1035 (9th Cir. 2006) (fee request under the Individuals with Disabilities Education Act,
5 20 U.S.C. § 1400, *et. seq.*).

6 Third, the court finds IGT's reliance on Plaintiffs' settlement demands in its "results
7 obtained" analysis is improper. IGT relies on *McCown v. City of Fontana*, 565 F.3d 1097 (9th
8 Cir. 2009), in asking the court to consider Plaintiffs' settlement demands, but in *McCown*,
9 both parties sought to introduce evidence of settlement discussions and negotiations for
10 purposes of ruling on the request for attorney's fees. *McCown*, 565 F.3d at 1104-05 n. 4.
11 Courts "generally refrain from referencing proposed settlement agreements in light of Federal
12 Rule of Evidence 408, which seeks to protect the confidentiality of settlement negotiations."
13 *Id.* Here, IGT is the only party who seeks to introduce the settlement negotiations as evidence,
14 and therefore the court will not compare Plaintiffs' settlement demand to the ultimate verdict
15 amount in ruling on the fees motion.

16 Finally, the court will examine the results obtained by Plaintiffs, an important factor
17 in determining a fee award. *Hensley*, 461 U.S. at 434. Under *Hensley*, this determination is
18 made by answering two questions: "First, did the plaintiff fail to prevail on claims that were
19 unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of
20 success that makes the hours reasonably expended a satisfactory basis for making a fee award?"
21 *Hensley*, 461 U.S. at 434; *see also McCown*, 565 F.3d at 1103.

22 Here, the answer to the first question is no. Claims are related if "they involve a common
23 core of facts or are based on related legal theories." *Thomas v. City of Tacoma*, 410 F.3d 644,
24 649 (9th Cir. 2005) (internal quotations omitted). The SOX claim Plaintiffs prevailed on and
25 the state law claims Plaintiffs did not prevail on are clearly related. They all arise from the
26 same common core set of facts: Plaintiffs' whistleblowing activities and subsequent termination
27 from IGT.

1 The answer to the second question is yes. Plaintiffs achieved a level of success that
2 makes the hours reasonably expended a satisfactory basis for making a fee award. *Hensley*,
3 461 U.S. at 434. "Where a plaintiff has obtained excellent results, his attorney should recover
4 a fully compensatory fee." *Id.* at 435. "There is no precise rule or formula for making these
5 determinations" and "[t]he court necessarily has discretion in making this equitable judgment."
6 *Id.* at 436-37.

7 IGT argues Plaintiffs prevailed on only one of their original claims, however, the
8 Supreme Court has recognized that proportionality is not the test to be utilized by the courts.
9 See *Hensley*, 461 U.S. at 435 n. 11; see also *McCown*, 565 F.3d at 1104 (citation omitted);
10 *McGinnis v. Kentucky Fried Chicken*, 51 F.3d 805, 806-09 (9th Cir. 1994) (arithmetic proration
11 "makes no practical sense"). "[A] plaintiff does not need to receive all the relief requested in
12 order to show excellent results warranting the fully compensatory fee." *Dang v. Cross*, 422
13 F.3d 800, 813 (9th Cir. 2005) (citations omitted).

14 While Plaintiffs only prevailed on the SOX claim, the court finds that Plaintiffs achieved
15 an excellent result, and should recover a fully compensatory fee. This action involved
16 protracted litigation for a period of more than six years, and there can be no question that the
17 result was significant. Although IGT considers the verdict in excess of \$2 million to be small
18 in comparison with the amount Plaintiffs requested at trial, in the court's experience, they
19 obtained an excellent result.

20 The court is mindful that it must consider whether Plaintiffs' unsuccessful pursuits were
21 a significant enough portion of their overall efforts to justify a reduction in fees. In the
22 Complaint, Plaintiffs' requested damages under SOX including reinstatement with same
23 seniority status, back pay with interest, lost earnings, benefits, bonuses, and stock options and
24 compensation for special damages including litigation costs, emotional distress, expert witness
25 fees and reasonable attorneys fees. (Doc. # 3 15.) In their state law claims, Plaintiffs requested
26 lost earnings, lost benefits, stock options and bonuses, and interest, as well as attorney's fees
27 and costs, and exemplary damages. (*Id.* at 16-19.) While Plaintiffs' SOX cause of action was
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1 the only claim that went to trial, the damages that Plaintiffs requested, in comparison to the
2 state law claims, were by and large the same.

3 In *McCown*, the Ninth Circuit noted that “results may not be measured solely in terms
4 of damages” and “the district court should consider not only the monetary results but also the
5 significant nonmonetary results [the plaintiff] achieved for himself and other members of
6 society.” *McCown*, 565 F.3d at 1105 (citing *Morales v. City of San Rafael*, 96 F.3d 359, 365
7 (9th Cir. 1996)). “Such a nonmonetary victory may constitute ‘excellent results’ for the purpose
8 of calculating attorney’s fees.” *Id.* The Plaintiffs received a result that confers a meaningful
9 public benefit. Plaintiffs note, and IGT does not dispute, that this is the first trial of a
10 whistleblower protection action under SOX in this jurisdiction. (Doc. # 323 4.) Plaintiffs also
11 correctly point out that this matter afforded the Ninth Circuit its “first opportunity to examine
12 the substantive requirements necessary to establish a claim under the whistleblower-protection
13 provisions of [SOX].” *Van Asdale v. IGT*, 577 F.3d 989, 991 (9th Cir. 2009). In enacting SOX,
14 congress made clear that fraud against shareholders is an issue of public concern, and created
15 a civil remedy for employees of public companies who are subject to discrimination or
16 retaliation for reporting corporate fraud. S. Rep. No. 107-146, at 1 (2002). Congress passed
17 SOX in the wake of the Enron scandal, in response to what it called:

18 [A] culture, supported by law, that discourage[s] employees from
19 reporting fraudulent behavior not only to the proper authorities...but
20 even internally. This “corporate code of silence” not only hampers
21 investigations, but also creates a climate where ongoing wrongdoing can
22 occur with virtual impunity.
23 S. Rep. No. 107-146, at 5 (2002). The whistleblower protection provision serves to “encourage
24 and protect [employees] who report fraudulent activity that can damage innocent investors
25 in publicly traded companies.” *Id.* at 19. Accordingly, the excellent result achieved by Plaintiffs
26 was a jury verdict, awarding them in excess of \$2 million, vindicating their own rights and the
27 public interest in preventing fraud against shareholders. For these reasons, the court declines
28 to impose a percentage reduction in fees.

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4. Hours Reasonably Expended

IGT argues that the number of hours spent by Plaintiffs' counsel should be reduced because Plaintiffs improperly included hours relating to: (1) the *IGT/Bally* litigation; (2) defending the motion for terminating sanctions that they lost; (3) appeals; (4) the OSHA complaint that was voluntarily withdrawn; (5) non-testifying expert Chris Comuntzis; (6) Ms. Fenner; and (7) entries that are unrelated or ambiguous. (Doc. # 339 8-12.)

At the outset, "[t]he fee applicant bears the burden of documenting the appropriate hours expended in litigation and must submit evidence in support of those hours worked." *Gates*, 987 F.2d at 1397 (citing *Hensley*, 461 U.S. at 433, 437). Time expended on work deemed "excessive, redundant, or otherwise unnecessary" shall not be compensated. *See Id.* (citation omitted). The party opposing the fee application then has the burden of submitting evidence "challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits." *Id.* at 1397-98 (citing *Blum*, 465 U.S. at 892 n. 5).

a. Hours related to the *Bally* litigation

IGT argues Plaintiffs are not permitted to recover 37.6 hours in fees associated with the *Bally v. IGT* litigation. (Doc. # 339 8-9.) Plaintiffs maintain that the depositions in the *Bally* litigation would not have taken place but for the instant litigation. (Doc. # 344 6.) In its minute order, the court asked Plaintiffs to specifically identify the billing entries, by date and description, that are related to time expended on the *Bally* litigation. (Doc. # 351.) In response, Plaintiffs filed Doc. # 352, and identified 39.9 hours in Exhibit 18. (Doc. # 352 4, Ex. 18.) Although the court did not request further briefing, Plaintiffs included an explanation in an effort to justify the time spent. (*Id.*) IGT filed a response arguing: (1) Exhibit 18 fails to reference entries challenged by IGT; (2) Plaintiffs' explanations for these entries do not make sense; and (3) Plaintiffs include entries that were not even challenged by IGT. (Doc. # 353.) Plaintiffs filed a motion to strike IGT's response. (Doc. # 354.)

The justification provided by Plaintiffs was beyond the scope of the court's minute order, and was not provided in Plaintiffs' motion or reply. Therefore, the court will not consider the explanations provided by Plaintiffs in Exhibit 18. The court denies Plaintiffs' motion to strike because it finds IGT's response was reasonable in light of Plaintiffs' improper inclusion of additional briefing and the discrepancy between the hours attacked by IGT and the hours identified by Plaintiffs in Exhibit 18.

Relief under 18 U.S.C. § 1514A(c) is provided to an employee prevailing in an *action brought under* 18 U.S.C. § 1514A(b)(1). The *Bally* action was separate from Plaintiffs' action under 18 U.S.C. § 1514A, and therefore Plaintiffs' fee award should be reduced by the amount of hours billed by Plaintiffs' counsel attributable to the *Bally* action. After reviewing Plaintiffs' billing records, IGT's challenged entries, and Plaintiffs' Exhibit 18 (not including the explanations), the court determines the following entries were for time expended in connection with the *Bally* litigation and will reduce the fee award accordingly:

Date	Lawyer/ Paralegal	Hours	Rate	Description	Total
7/24/06	Lenz	1.0	\$350	Legal analysis re subpoena duces tecum from Bally	\$350
7/25/06	Piscevich	3.0	\$450	Review subpoena from Bally & review documents that may be responsive	\$1,350
7/25/06	Piscevich	0.5	\$450	Dictate letter to Ms. Candido re: subpoena & documents	\$225
7/25/06	Stark	1.6	\$120	Review and organize documents with Ms. Piscevich for approval to produce pursuant to subpoena; prepare boxes for pickup and delivery	\$192
7/26/06	Lenz	0.5	\$350	Review and revise responses to Subpoena Duces Tecum from Ballys	\$175
7/27/06	Piscevich	2.0	\$450	Review documents & revise selection to be produced & revise letter to Ms. Candido	\$900

1	7/28/06	Piscevich	0.3	\$450	Telephone call with Ms. Candido re: documents produced by plaintiffs in response to subpoena; review email from Ms. Candido	\$135
2						
3						
4	7/28/06	Piscevich	0.2	\$450	Telephone call with Ms. Candido re: status of motions	\$90
5						
6	7/28/06	Piscevich	0.1	\$450	Review letter from Ms. Candido	\$45
7	8/2/06	Lenz	0.3	\$350	Receive and review subpoena from IGT in Bally case re communications with Bally's counsel	\$105
8						
9	8/2/06	Piscevich	0.2	\$450	Review letter from Mr. Dilger & subpoena & notice to take deposition	\$90
10						
11	8/2/06	Piscevich	0.2	\$450	Telephone call with Mr. Peek re: his deposition notice & mine	\$90
12						
13	8/2/06	Piscevich	0.4	\$450	Dictate letter to Mr. Dilger	\$180
14	8/10/06	Piscevich	0.3	\$450	Review letters from Ms. Candido re: documents & privileges; call to Ms. Candido re: letters	\$135
15						
16	8/30/06	Lenz	2.0	\$350	Receive and review discovery dispute letter from N. Dilger; legal analysis and draft response to discovery dispute letter re subpoena to Piscevich & Fenner	\$700
17						
18						
19	8/30/06	Piscevich	0.1	\$450	Review letter from Mr. Dilger	\$45
20	8/31/06	Lenz	0.5	\$350	Review and revise letter to N. Dilger re subpoena	\$175
21						
22	2/21/07	Lenz	1.0	\$350	Receive and review correspondence from A. Candido to N. Dilger; legal analysis re correspondence for possible revision of Opp to motion for reconsideration	\$350
23						
24						
25	2/21/07	Piscevich	0.1	\$450	Review email from Mr. Peek & letter	\$45
26	2/22/07	Piscevich	0.2	\$450	Telephone call with Mr. Peek advising will produce email	\$90
27						
28						

1	4/19/07	Piscevich	0.4	\$450	Telephone calls from & with Mr. Delk & clients re: depositions in the Bally's case	\$180
2						
3	4/20/07	Lenz	0.5	\$350	Review subpoenas for depositions of Shawn and Lena; email to SVA and LVA re depositions	\$175
4						
5	4/23/07	Piscevich	0.5	\$450	Review subpoenas served on clients; dictate letter to Mr. Peek & Mr. Verhoeven	\$225
6						
7	5/16/07	Piscevich	0.2	\$450	Telephone call with Mr. Peek re: privilege issues	\$90
8						
9	5/16/07	Piscevich	0.2	\$450	Telephone call from Mr. Dilger re: privilege issues	\$90
10						
11	5/16/07	Piscevich	0.1	\$450	Review letter from Mr. Dilger	\$45
12	5/16/07	Piscevich	0.5	\$450	Dictate letter to Mr. Dilger & Mr. Peek	\$225
13						
14	5/21/07	Piscevich	0.1	\$450	Telephone call to Mr. Peek's office for order	\$45
15	5/21/07	Piscevich	0.2	\$450	Telephone call with Mr. Peek re: hearing & Markman order	\$90
16						
17	5/21/07	Piscevich	0.2	\$450	Telephone call with Mr. Delk re: Shawn's deposition & alternative dates	\$90
18						
19	5/30/07	Piscevich	0.6	\$450	Telephone calls to & from Ms. Candido & clients re: depositions & rescheduling depositions in Bally case	\$270
20						
21	5/31/07	Piscevich	0.2	\$450	Telephone call with clients re: Bally depositions	\$90
22						
23	5/31/07	Piscevich	0.4	\$450	Dictate letter to Mr. Dilger re: depositions	\$180
24						
25	6/1/07	Piscevich	0.1	\$450	Review letter from Mr. Dilger re: waiver of privilege	\$45
26						
27	6/4/07	Piscevich	8.0	\$450	Attend & defend deposition of Mrs. Van Asdale in IGT/Bally litigation	\$3,600
28						
	7/9/07	Piscevich	0.1	\$450	Review letter from Ms. Candido cancelling deposition	\$45
	4/15/08	Lenz	0.5	\$350	Telephone conference with A.	\$175

				Candido re time of depo for Shawn Van Asdale; email to SVA re depo time	
4/21/08	Lenz	0.3	\$350	Telephone conference with A. Candido re depo scheduling and continuance	\$105
6/18/08	Piscevich	0.2	\$450	Review letter from Ms. Candido & send email to client re: his deposition	\$90
6/26/08	Piscevich	0.1	\$450	Review email from Ms. Candido & send email to Mr. Van Asdale re: his deposition	\$45
6/27/08	Piscevich	0.1	\$450	Reply to email from Ms. Candido re: Shawn's deposition	\$45
7/16/08	Piscevich	0.2	\$450	Review emails (4) from Mr. Glasser & Ms. Candido re: deposition of client	\$90
7/16/08	Piscevich	0.2	\$450	Telephone call with Ms. Candido re: deposition of Mr. Van Asdale	\$90
7/16/08	Piscevich	0.1	\$450	Review letter from Mr. Dilger & send same to client	\$45
7/17/08	Piscevich	0.2	\$450	Review emails from Ms. Candido & Mr. Glasser & reply to same re: Mr. Van Asdale's deposition	\$90
7/21/08	Piscevich	8.0	\$450	Attend & defend deposition of Mr. Van Asdale	\$3600
7/28/08	Piscevich	0.1	\$450	Review email & letter from Ms. Candido	\$45
9/3/08	Piscevich	0.4	\$450	Dictate letter to Amy Candido re documents located	\$180
10/26/09	Piscevich	0.2	\$450	Telephone call with Mr. Peek re: affirmance; call to Ms. Candido	\$90
3/21/10	Piscevich	0.5	\$450	Dictate letter to Candido	\$225
5/5/10	Piscevich	0.8	\$450	Telephone conference with Ms. Candido	\$360
5/5/10	Piscevich	0.9	\$450	Dictate letter to Ms. Candido	\$405
TOTAL:					\$16,632

1
2 Plaintiffs' fee award is reduced by \$16,632, resulting in a total of \$1,066,144 in fees
3 (calculated by subtracting \$16,632 from \$1,082,776).

4 **b. Motion for terminating sanctions**

5 IGT argues Plaintiffs are not entitled to recover fees for 53.9 hours expended on their
6 defense of IGT's motion for terminating sanctions. (Doc. # 339 9.) Plaintiffs argue they may
7 recover these fees because IGT failed to obtain its desired result. (Doc. # 344 '6.)

8 The court has discretion to exclude fees that are excessive, redundant, or otherwise
9 unnecessary. *See Hensley*, 461 U.S. at 433-34; *Gates*, 987 F.2d at 1397. IGT filed a motion
10 for terminating sanctions against Plaintiffs on August 10, 2006, which Plaintiffs opposed.
11 (Doc. # 135 and # 144.) The court declined to issue terminating sanctions, but awarded
12 monetary sanctions in the form of counsel's fees for preparing the motion and travel costs for
13 the hearing. (Doc. #149.) IGT sought to recover \$39,201.18 in fees and \$572.18 in costs. (Doc.
14 # 158.) Plaintiffs moved to retax the costs and fees incurred by IGT in connection with the
15 motion. (Doc. # 161.) IGT opposed and renewed its motion for terminating sanctions based
16 on further discovery developments. (Doc. # 188.) IGT's renewed motion for terminating
17 sanctions was pending when the court granted summary judgment as to Plaintiffs' SOX claim.
18 After the appellate court reversed and remanded the matter, IGT renewed its request for
19 terminating sanctions, and revisited the dispute as to the amount of monetary sanctions
20 awarded against Plaintiffs. (Doc. # 225.) The court denied IGT's renewed request for
21 terminating sanctions. (Doc. # 233 and # 234.) The court ordered IGT was entitled to recover
22 \$9,449.33 in fees and \$512.18 in costs in connection with the original motion for terminating
23 sanctions. (Doc. # 246.)

24 The court finds that the hours expended by Plaintiffs' counsel in connection with IGT's
25 motion for terminating sanctions were not excessive, unnecessary, or redundant, and declines
26 to reduce the fee award on this ground. While IGT was successful in obtaining monetary
27 sanctions against the Plaintiffs, the court did not issue terminating sanctions. In addition, the
28

1 court denied the renewed request for terminating sanctions, and reduced the fees requested
2 by IGT from \$39,201.18 to \$9,449.33. With this in mind, the court cannot conclude that the
3 time spent by Plaintiffs' counsel in these endeavors was unreasonable.

4 **c. Hours related to appeals**

5 IGT argues that the fees incurred in connection with appeals are not allowed because
6 Plaintiffs failed to request such fees from the circuit. (Doc. # 344 9-10.) Plaintiffs argue that
7 the mandatory phrase "litigation expenses" under SOX distinguishes it from the requirement
8 that fees on appeal be requested from the circuit under a statute such as 42 U.S.C. § 1988,
9 where the award of costs and fees is discretionary. (Doc. # 344 7-8.)

10 At issue is whether Plaintiffs were required to request fees incurred in connection with
11 the appeals directly from the Clerk of the Ninth Circuit in the first instance. Ninth Circuit Rule
12 39-1.6 provides that a request for attorney's fees must be filed with the circuit clerk within
13 fourteen days from the expiration of the period within which a petition for rehearing may be
14 filed. *See* Circuit Rule 39-1.6, 1.8. If a petition for rehearing is filed, a request for attorney's
15 fees must be filed with the circuit clerk within fourteen days after the court's disposition of the
16 petition. *Id.* The circuit rules allow for the transfer of a fees-on-appeal request to the district
17 court for consideration, but "the decision to permit the district court to handle the matter rests
18 with the court of appeals." *Cummings v. Connell*, 402 F.3d 936, 948 (9th Cir. 2005), *as*
19 *amended* April 17, 2005.

20 The case law on this topic appears to be somewhat unsettled in the Ninth Circuit.
21 *Cummings* involved a class action brought pursuant to 42 U.S.C. § 1983, and a request for
22 attorneys' fees under § 1988. *Cummings*, 402 F.3d at 940-41. The district court awarded costs
23 and fees to the plaintiffs as prevailing party, including fees and costs incurred on appeal. *Id.*
24 at 942. In the second paragraph of the opinion, the Ninth Circuit clearly states, "pursuant to
25 Ninth Circuit Rule 39-1.6, a request for attorney's fees incurred on appeal must be made to
26 us, not to the district court. The district court is not authorized to award attorney's fees for
27 an appeal unless we transfer the fee request to the district court for consideration." *Id.* at 940.

1 Just seven months later, in *Twentieth Century Fox Film Corp. v. Entm't Distrib.*, 429
2 F.3d 869 (9th Cir. 2005), the Ninth Circuit affirmed an award of attorney's fees pursuant to
3 17 U.S.C. § 505, for work done on appeal. There, the district court granted Twentieth Century
4 Fox's motion for summary judgment, and its motion for attorney's fees. *Id.* at 875. Dalstar,
5 the losing party, appealed the summary judgment ruling, and the Ninth Circuit affirmed
6 judgment on the Lanham Act claim, and reversed and remanded the copyright claims. *Id.*
7 Dalstar also appealed the fee award, and the Ninth Circuit rejected the arguments that the fee
8 request was not adequately documented and that the rates were excessive, but vacated and
9 remanded the award pending resolution of the copyright claims. *Id.* The parties proceeded
10 with a bench trial on the copyright claims, and Twentieth Century Fox prevailed. *Id.* The
11 district court once again granted the motion for attorneys' fees. *Id.* Dalstar appealed, and the
12 Ninth Circuit considered whether the district court abused its discretion in awarding the fees
13 on appeal of the summary judgment motion. *Id.* at 884. Dalstar, relying on Ninth Circuit
14 Rules 39-1.6 and 39-1.8, argued that the district court was without jurisdiction to award the
15 fees because Twentieth Century Fox did not first file an application with the Clerk of the Ninth
16 Circuit. *Id.*

17 Relying on *Cabrales v. Los Angeles*, 935 F.2d 1050 (9th Cir. 1991), the Ninth Circuit
18 found that the district court did not abuse its discretion in awarding the fees on appeal.
19 *Twentieth Century Fox*, 429 F.3d at 884. The Ninth Circuit pointed out that *Cabrales* involved
20 a fee award under 42 U.S.C. § 1988, and the plaintiffs were compensated for attorneys' fees
21 on appeal because the work "contribute[d] to the ultimate victory in the lawsuit." *Id.* (quoting
22 *Cabrales v. Los Angeles*, 935 F.2d 1050, 1052 (9th Cir. 1991) (internal quotations and citaton
23 omitted). Interestingly, the holding in *Cummings*, issued seven months earlier, was not
24 mentioned.

25 In *Natural Resources Defense Council, Inc. v. Winter*, 543 F.3d 1152 (9th Cir. 2008),
26 the Natural Resources Defense Council (NRDC) was successful in obtaining a TRO enjoining
27 the U.S. Navy from using mid-frequency sonar during training exercises, and subsequently
28

1 reached a settlement. *Winter*, 543 F.3d at 1154-55. NRDC filed a motion for attorneys' fees and
 2 costs for work done in the district court and appeal under the EAJA, 28 U.S.C. § 2412. *Id.* The
 3 district court granted the motion. *Id.* On appeal, the Navy challenged, among other things, the
 4 court's award of attorneys' fees to NRDC for hours spent preparing the appeal of the TRO. *Id.*
 5 at 1158. The Navy relied on Ninth Circuit Rules 39-1.6 and 39-1.8 and the decision in
 6 *Cummings*. *Id.* at 1164. The Ninth Circuit recognized its holding in *Cummings*, that appellate
 7 fees requested pursuant to 42 U.S.C. § 1988 must be filed with the Clerk of the Ninth Circuit
 8 in the first instance, and not with the district court. *Id.* (citing *Cummings*, 402 F.3d at 947-48).
 9 The court also pointed out the result reached in *Twentieth Century Fox*, affirming an award
 10 for work done on appeal. *Id.* Ultimately, in *Winter*, the Ninth Circuit concluded that the fee
 11 award was properly filed in the district court, reasoning:
 12 [t]he EAJA, however, unlike the fee-shifting statutes- 28 U.S.C. § 1988 and 17
 13 U.S.C. § 505- states that 'a court shall award to a prevailing party other than the
 14 United States fees and other expenses...incurred by that party in any civil
 15 action...brought by or against the United States in *any court* having jurisdiction
 16 of that action.
 17 *Id.* (quoting 28 U.S.C. § 2412(d)(1)(A)) (emphasis in original in opinion, not in statute) (internal
 18 quotations omitted). The court went on to conclude that "the plain language of the statute
 19 indicates that the district court may properly award fees for *all* levels of litigation." *Id.*
 20 (emphasis original) (citation omitted). To the extent the Ninth Circuit rules were inconsistent,
 21 the EAJA was controlling. *Id.* at 1164 (internal quotations and citation omitted). Finally, the
 22 court found that like the fee award affirmed in *Twentieth Century Fox*, these fees contributed
 23 to the ultimate victory in the lawsuit. *Id.* (citing *Twentieth Century Fox*, 429 F.3d at 884).

24 Because *Winter* relies primarily on the language of the EAJA in finding that fees on
 25 appeal may be sought from the district court in the first instance, it does not resolve the
 26 discrepancy between *Cummings* and *Twentieth Century Fox*. Upon further examination of
 27 *Cummings*, *Twentieth Century Fox*, *Winter*, and *Cabrales*, the court finds Plaintiffs were
 28 required to request fees from the Ninth Circuit in the first instance because: (1) unlike *Winter*,
 the plain language of SOX does not indicate that the district court may properly award fees for

1 all levels of litigation; and (2) *Twentieth Century Fox*, insofar as it is based on *Cabrales*, is
 2 inapposite.

3 *i. SOX does not provide for an award of fees at all levels of litigation*

4 *Winter* involved a fee request under the EAJA. The EAJA provides: "Except as otherwise
 5 specifically provided by statute, a court shall award to a prevailing party...fees and other
 6 expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party
 7 in any civil action...brought by or against the United States in *any court* having jurisdiction of
 8 that action..." 28 U.S.C. § 2412(d)(1)(A) (emphasis added). *Winter* focuses on the language
 9 "in any court" in holding that the district court properly awarded fees on appeal in the first
 10 instance.

11 A whistleblower under SOX has two options for seeking relief: (1) filing a complaint with
 12 the Secretary of Labor; or (2) if the Secretary has not issued a final decision within 180 days,
 13 bring an action in the district court. 18 U.S.C. § 1514A(b)(1). If successful in either of these
 14 proceedings, the employee is entitled to:

15 all relief necessary to make the employee whole. This relief shall include--
 16 (A) reinstatement with the same seniority status that the employee would
 17 have had, but for the discrimination; (B) the amount of back pay, with
 18 interest; and (C) compensation for any special damages sustained as a
 19 result of the discrimination, including litigation costs, expert witness fees,
 20 and reasonable attorney fees.
 21 18 U.S.C. § 1514A(c).

22 Unlike the EAJA, SOX does not specifically provide for the recovery of fees and expenses
 23 incurred in an action brought in "any court" having jurisdiction of the action. Instead, SOX
 24 specifically states that the remedies are available to "[a]n employee prevailing in any action
 25 under subsection (b)(1)" -a complaint with the Secretary of Labor or an action in the district
 26 court. This weighs in favor of finding that Plaintiffs were required to request fees from the
 27 appellate court in the first instance.

28 *ii. Twentieth Century Fox is inapposite*

In its determination that fees on appeal were properly awarded by the district court,
Twentieth Century Fox relies on *Cabrales*. In *Cabrales*, the plaintiff won her civil rights lawsuit

1 and was awarded a \$150,000 jury verdict. *Cabrales*, 935 F.2d at 1051. She moved for attorney's
2 fees under § 1988 and was awarded fees. *Id.* The county appealed the verdict and fees award.
3 *Id.* The Ninth Circuit affirmed, and subsequently awarded her attorney's fees on appeal. *Id.*
4 The county filed a petition for certiorari to the U.S. Supreme Court. *Id.* The Supreme Court
5 granted the petition, vacated the judgment and remanded for further consideration in light of
6 a recent case. *Id.* On remand, the Ninth Circuit considered the new case, found it inapposite,
7 reinstated the original decision, and affirmed the district court's judgment. *Id.*

8 The county filed a second petition for certiorari, which was denied. *Cabrales*, 935 F.2d
9 at 1051. *Cabrales* moved the Supreme Court for attorney's fees incurred in opposing both
10 petitions for certiorari, which the Supreme Court denied without prejudice to be renewed in
11 the district court. *Id.* at 1051-52. *Cabrales* did so, and the district court awarded her fees on
12 the second petition (which had been denied), but nothing on the first (which had been granted).
13 *Id.* at 1052. *Cabrales* appealed the district court's denial of fees incurred in opposing the first
14 petition for certiorari. *Id.*

15 The Ninth Circuit, interpreting *Hensley v. Eckerhart*, 461 U.S. 424 (1983), stated that
16 *Hensley* "establish[ed] the general rule that plaintiffs are to be compensated for attorney's fees
17 incurred for services that contribute to the ultimate victory in the lawsuit. Thus even if a specific
18 claim fails, the time spent on that claim may be compensable, in full or in part, if it contributes
19 to the success of other claims." *Cabrales*, 935 F.2d at 1052 (citation omitted). *Cabrales* also
20 referenced the holding in *N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346 (9th Cir. 1984), in
21 finding, "[i]f a plaintiff ultimately wins on a particular claim, she is entitled to all attorney's fees
22 reasonable expended in pursuing that claim- even though she may have suffered some adverse
23 rulings." *Id.* at 1052-53.

24 Here, the court is not saying that Plaintiffs would not be entitled to recover fees and costs
25 on appeal if they were properly requested. Instead, the court finds that Plaintiffs should have
26 requested the fees incurred on appeal in the Ninth Circuit in the first instance, or that they
27 should have sought a transfer of the request to the district court. This was not the question
28

posed in *Cabrales*, and therefore it is distinguishable. *Cabrales* brought the request for fees concerning the petition for certiorari to the Supreme Court and the Supreme Court remanded the request for fees on the certiorari petition that had been granted to the district court. *Cabrales*, 935 F.2d at 1051-52. With respect to the fees that *Cabrales* had sought on appeal (as compared to those in connection with the petition for certiorari), *Cabrales* sought and was awarded those fees by the Ninth Circuit. *Id.* at 1051.

In sum, nothing in SOX indicates that this court has jurisdiction to entertain the request for fees and costs in the first instance, as was the case with the EAJA. In addition, *Cabrales*, on which *Twentieth Century Fox* relies, is distinguishable. The court finds that the holding in *Cummings* applies to this case.

Plaintiffs do not indicate that they made any requests for fees from the circuit court or that they filed a motion to transfer consideration of attorney's fees on appeal. The court recognizes that this may have been an oversight, and that this oversight is met with harsh results; however, the court is without authority to award any appellate fees. Therefore, the court finds that the Plaintiffs are not entitled to attorneys' fees incurred in the course of the appeal. The court finds that the following hours were related to the appeal and will reduce Plaintiffs' award of attorneys' fees accordingly:

Date	Lawyer/ Paralegal	Hours	Rate	Description	Total
6/3/05	Piscevich	0.2	\$450	Telephone call with Mr. Herb (clerk of court) re: appeal	\$90
2/2/06	Piscevich	0.2	\$450	Telephone call from Ms. Mills of 9 th Circuit	\$90
2/27/06	Piscevich	0.1	\$450	Review order from 9 th Circuit	\$45
5/1/06	Piscevich	0.1	\$450	Review letter from Ms. Candido to 9 th Circuit	\$45
3/8/09	Piscevich	2.5	\$450	Begin review for oral argument	\$1,125
3/9/09	Piscevich	0.1	\$450	Review & reply to email from clerk of court changing time of oral argument	\$45

1	3/9/09	Piscevich	5.5	\$450	Continue with review of documents & file to prepare for oral argument	\$2,475
2	3/10/09	Piscevich	3.5	\$450	Continue with preparation for oral argument	\$1,575
3	3/11/09	Piscevich	3.0	\$450	Continue with review of file & work on argument	\$1,350
4	3/11/09	Piscevich	3.5	\$450	Travel from Reno to San Francisco & to hotel & review cases in flight	\$1,575
5	3/11/09	Piscevich	1.0	\$450	Continue with case review & outline	\$450
6	3/12/09	Piscevich	2.0	\$450	Attend argument at 9 th Circuit	\$900
7	3/12/09	Piscevich	3.0	\$450	Return from San Francisco to Reno	\$1,350
8	9/22/05	Piscevich	0.1	\$450	Letter to Van Asdale with copy of Opening Brief of Appellant International Game Technology	\$45
9	3/10/09	Fenner	1.2	\$350	Participate in preparation for oral argument before 9 th Circuit	\$420
10	6/2/05	Lenz	2.5	\$350	Receive and review Notice of Appeal; legal analysis re appealable interlocutory orders; correspondence to R. Campbell re Notice of Appeal	\$875
11	6/20/05	Lenz	6.5	\$350	Legal analysis and draft Motion to Dismiss appeal	\$2,275
12	7/12/05	Lenz	2.5	\$350	Review Opposition to Motion to Dismiss Appeal; legal analysis and commence draft Reply in support	\$875
13	7/13/05	Lenz	4.5	\$350	Continued legal analysis and draft Reply in Support of Motion to Dismiss Appeal; arrange for filing and service	\$1,575
14	7/25/05	Lenz	7.5	\$350	Legal analysis and draft Opposition to Motion for Stay (9 th Cir.) proof and revise to final form; arrange for filing and service	\$2,625
15	8/8/05	Lenz	0.3	\$350	Receive and Review IGT's Reply in support of motion for stay	\$105
16	8/16/05	Lenz	1.0	\$350	Telephone conference with D. Lombardi re 9 th Circuit settlement conference	\$350
17	9/20/05	Lenz	2.0	\$350	Receive and review IGT's opening	\$700

				Brief; commence legal analysis of Answering brief	
9/21/05	Lenz	0.5	\$350	Legal analysis re briefing and motion to dismiss appeal	\$175
5/10/06	Lenz	0.5	\$350	Fact Investigation/ Development- receive and review IGT Motion to Seal Documents in 9 th Cir.	\$175
5/10/06	Lenz	2.0	\$350	Appellate Motions and Submissions- legal analysis and draft Opposition to Motion to Place Appellate Record Under Seal	\$700
8/22/07	Lenz	3.0	\$350	Appellate Motions and Submissions- legal analysis and prepare Notice of Appeal, Docketing Statement and Statement of issues	\$1,050
8/24/07	Lenz	1.5	\$350	Prepare representation statement; review and revise issues statement; email to S. Van Asdale	\$525
8/31/07	Lenz	1.0	\$350	Review and revise Issues statement for appeal	\$350
8/31/07	Lenz	0.5	\$350	Proof and revise Notice of Appeal; e-file Notice of Appeal	\$175
9/10/07	Lenz	1.0	\$350	Receive and review Time Scheduling Order; proof and revise Docketing Statement for filing; prepare transcript designation	\$350
11/19/07	Lenz	6.5	\$350	Continued draft Opening Brief; review Excerpts of Record	\$2,275
12/6/07	Lenz	1.0	\$350	Commence outline of Opening brief on Appeal; prepare for conference with S. Van Asdale	\$350
12/6/07	Lenz	1.5	\$350	Prepare for and attend conference with S. Van Asdale re appeal brief	\$525
12/7/07	Lenz	1.5	\$350	Commence draft outline for Opening Brief on Appeal	\$525
12/10/07	Lenz	4.5	\$350	Continued outline of Opening Brief on Appeal; review 9 th Cir. Rules re Excerpts of Record	\$1,575
12/11/07	Lenz	1.5	\$350	Continued drafting Opening Brief on Appeal	\$525
12/12/07	Lenz	1.0	\$350	Continued draft Opening Brief	\$350

1	12/13/07	Lenz	2.5	\$350	Continued draft Opening Brief	\$875
2	12/15/07	Lenz	4.0	\$350	Continued draft Opening Brief on Appeal	\$1,400
3	12/17/07	Lenz	5.0	\$350	Continued draft Opening Brief	\$1,750
4	12/17/07	Lenz	2.0	\$350	Continued legal analysis and draft of Opening Brief on Appeal	\$700
5	12/17/07	Lenz	2.0	\$350	Continued legal analysis and draft argument for Opening Briefs	\$700
6	12/18/07	Lenz	1.0	\$350	Legal analysis and draft Motion to release Docket sheet	\$350
7	12/20/07	Lenz	6.5	\$350	Continued legal analysis and draft of opening brief	\$2,275
8	12/21/07	Lenz	3.5	\$350	Complete draft Opening Brief on Appeal	\$1,225
9	12/26/07	Lenz	4.5	\$350	Proof and revise Opening Brief on Appeal; review Excerpts of Record	\$1,575
10	1/4/08	Lenz	0.5	\$350	Legal analysis and correct Opening Brief on Appeal	\$175
11	2/18/08	Lenz	2.5	\$350	Commence review and analysis of IGT Answering Brief on Appeal	\$875
12	2/19/08	Lenz	2.5	\$350	Continued legal analysis for Reply Brief	\$875
13	2/25/08	Lenz	5.0	\$350	Continued legal analysis and draft Reply brief	\$1,750
14	2/26/08	Lenz	8.0	\$350	Complete draft Reply Brief on Appeal	\$2,800
15	2/27/08	Lenz	3.5	\$350	Complete draft Reply Brief on Appeal	\$1,225
16	2/28/08	Lenz	1.0	\$350	Proof and revise to final form Reply Brief on Appeal; arrange for filing and service	\$350
17	1/21/09	Lenz	0.5	\$350	Receipt and review of Notice of Oral Argument; email to S Van Asdale re Notice; telephone conference with S. Van Asdale re oral argument	\$175
18	2/19/09	Lenz	2.0	\$350	Legal analysis re IGT supplemental authority	\$700
19	2/20/09	Lenz	2.0	\$350	Commence outline for oral	\$700

				argument	
3/6/09	Lenz	2.5	\$350	Continued review of cases and briefing for oral argument	\$875
3/9/09	Lenz	2.0	\$350	Continued analysis and preparation for oral argument	\$700
3/10/09	Lenz	4.5	\$350	Continued preparation of argument for oral argument	\$1,575
3/11/09	Lenz	2.0	\$350	Continued preparation for oral argument; review issues and questions anticipated	\$700
3/12/09	Lenz	1.5	\$350	Review and analysis re oral argument and standard of review for affidavit	\$525
9/9/09	Lenz	0.5	\$350	Prepare and file Bill of Costs	\$175
1/9/08	Lenz	1.0	\$350	Telephone conference with 9 th Cir. Clerk re Excerpts of Record; review and revise Volume 1; arrange for re-filing	\$350
12/26/07	Stark	2.2	\$120	Support and preparation of documents for reproduction for 9 th Circuit; meet with documents at Total Image re reproduction, copies, covers, binding	\$264
12/27/07	Stark	2.5	\$120	Continued support and preparation for motion and exhibits for 9 th Circuit; deliver additional documents for reproduction; meet w/ Total Image regarding additional copies, covers; return completed copies to office; prepare for shipment	\$300
TOTAL:					\$56,524

Plaintiffs' fee award is now reduced to \$1,009,620 (calculated by subtracting \$56,524 from \$1,066,144).

d. Hours related to dismissed OSHA complaint

IGT argues Plaintiffs' fee award should be reduced by 127.8 hours expended in connection with the OSHA complaint that was voluntarily withdrawn. (Doc. # 339 10-11.)

1 Plaintiffs maintain that they should be able to recover these fees because SOX requires the case
2 be commenced with OSHA. (Doc. # 344 8.)

3 SOX requires the filing of a complaint before the Secretary of Labor before a complaint
4 can be filed in district court. 18 U.S.C. § 1514A(b)(1). Moreover, SOX provides relief for an
5 employee prevailing in an action brought pursuant to 18 U.S.C. § 1514A(b)(1), which includes
6 a proceeding before the Secretary of Labor as well as before the district court. *Id.* Since 18
7 U.S.C. § 1514A(c) specifically refers to subsection (b)(1), and does not limit the recovery of fees
8 to those incurred in connection with the action filed in the district court, the court finds
9 Plaintiffs are entitled to recover reasonable attorneys' fees incurred in pursuing the complaint
10 before the Secretary of Labor.

11 **e. Hours related to non-testifying expert Chris Comuntzis**

12 IGT argues Plaintiffs' fee award should be reduced by 37 hours for time expended in
13 connection with expert Chris Comuntzis, who did not testify at trial. (Doc. # 339 11.) Plaintiffs
14 assert that they may recover these fees because IGT continually asserted that to prove
15 shareholder fraud, Plaintiffs had to establish that the Australian Flyer was material, and this
16 was the purpose for engaging Mr. Comuntzis. (Doc. # 344 8-9.)

17 It is undisputed that SOX allows the prevailing party to recover expert witness fees as
18 damages. *See* 18 U.S.C. § 1514A(c). The court is not aware of any case determining whether
19 expert fees are allowed under SOX for an expert who did not testify at trial, and neither party
20 cites any legal authority in support of their position. SOX does not specifically limit the
21 recovery of expert witness fees to those witnesses who were called at trial. Moreover, the court
22 cannot conclude that the fees associated with Mr. Comuntzis are excessive or unnecessary.

23 According to Plaintiffs' counsel, Mr. Comuntzis was designated as an expert, testified in
24 deposition, was listed as an expert witness for trial, and was on standby to appear for trial.
25 (Doc. # 344-1 at ¶ 6.) Plaintiffs ultimately made a strategic decision not to call Mr. Comuntzis
26 as a witness at trial. (*Id.*) Given the broad language of SOX that Plaintiffs are "entitled to all
27 relief necessary to make [them] whole," including "litigation costs" and "expert witness fees,"
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1 the court finds that Plaintiffs are entitled to recover the fees and costs incurred in connection
 2 with Mr. Comuntzis, even though he ultimately was not called to testify at trial.

3 **f. Hours for Ms. Fenner**

4 IGT attacks the hours expended by Ms. Fenner on the ground that Plaintiffs failed to
 5 provide the necessary documentary support for any time spent by Ms. Fenner. (Doc. # 339
 6 11.) Plaintiffs assert that requesting Ms. Fenner's hours is reasonable because during trial, IGT
 7 had three counsel at counsel table, one or two other attorneys in court, along with one or more
 8 paralegals, and a trial consultant. (Doc. # 344 9.)

9 The court reminds Plaintiffs that the number of attorneys and other professionals IGT
 10 had at trial is irrelevant to *Plaintiffs'* motion for fees. Nonetheless, the court does not find the
 11 hours expended by Ms. Fenner were unnecessary, redundant, or excessive, and declines to
 12 reduce the fee award by this amount. Ms. Fenner's time will be included in the fee award at
 13 the hourly rate of \$350, as determined above.

14 **g. Hours for unrelated or ambiguous items**

15 IGT contends that the following billing entries appear to be either unrelated or
 16 ambiguous and as a result, 46.65 hours should be cut from Plaintiffs' fee award: 9/2/04;
 17 3/4/06; 6/12/06; 6/29/06; 11/3/06; 1/3/07; 1/17/07; 2/20/07(2); 9/2/08; 9/9/09; 9/15/09;
 18 9/21/09; 10/15/09; 11/17/09 (2); 11/18/09; 11/20/09; 3/12/10; 3/13/10; 3/15/10; 3/10/10;
 19 5/7/10; 12/7/10; 12/28/10; 1/7/11; 1/9/11 (2); and 1/13/11.

20 If the prevailing party fails to submit adequate documentation in support of the hours
 21 expended, the court may reduce the award. *Hensley*, 461 U.S. at 433. In *Hensley*, the Supreme
 22 Court observed, "counsel, of course, is not required to record in great detail how each minute
 23 of his time was expended. But at least counsel should identify the general subject matter of
 24 his time expenditures." *Hensley*, 461 U.S. at 437 n. 12, 433. The court has reviewed the billing
 25 entries attacked by IGT and finds that none are ambiguous, and all appear to be related to this
 26 matter. (See Doc. # 323 Ex. 1.) Therefore, the court will not reduce Plaintiffs' fee award on
 27 this basis.

5. Conclusion on Fees

Plaintiffs are entitled to recover \$1,009,620 in fees. This is calculated by taking the amount of Plaintiffs' fee request, \$1,237,956, and adjusting the hourly rates of Mr. Lenz and Ms. Fenner to \$350, for a total of \$1,082,776. The court then reduced the fees to account for the hours expended on the *Bally* litigation (\$16,632) and on appeal (\$56,524).

B. COSTS

It is undisputed that SOX allows a prevailing employee to recover litigation costs. 18 U.S.C. §1514A(c)(1)(C). Plaintiff seek \$135,358.85 in costs. (Pl.'s Bill of Costs (Doc. # 324).) IGT objects on the following grounds: (1) costs should be reduced to account for Plaintiffs' limited success; (2) Plaintiffs cannot recover costs on appeal; (3) costs related to non-testifying expert Chris Comuntzis should be excluded; (4) Plaintiffs are not entitled to specific costs related to their unsuccessful state law claims; and (5) Plaintiffs cannot recover costs for unsubstantiated in-house copies. (Doc. # 339 16-18.)

1. Costs and Plaintiffs' Success

IGT argues Plaintiffs' costs should be reduced by 50% to reflect Plaintiffs' limited success. (Doc. # 339 16, 18.) As set forth above, the court declines to exercise its discretion to reduce Plaintiffs' fees and costs on this ground. (*See supra* at III.A.3.)

2. Costs on Appeal

IGT requests that Plaintiffs' costs be reduced by \$521.91, for those costs incurred for travel to and from a Ninth Circuit hearing. (Doc. # 339 16.)

As set forth above, Plaintiffs were required to request fees and costs on appeal with the Clerk of the Ninth Circuit in the first instance. (*See supra* at III.A.4(iii).) To the extent Plaintiffs did request costs from the Ninth Circuit, and were denied, the court finds their request is improper for this reason as well. Accordingly, Plaintiffs' costs are reduced to \$134,836.94 (calculated by subtracting \$521.91 from \$135,358.85).

1 **3. Costs Related to Non-Testifying Expert Chris Comuntzis**

2 IGT argues Plaintiffs' costs bill should be reduced by \$63,245.02 for those costs
3 associated with expert Chris Comuntzis, who did not testify at trial, and therefore was
4 unnecessary and excessive. (Doc. # 339 16-17.)

5 For the reasons set forth above concerning the fees incurred in connection with Mr.
6 Comuntzis, the court finds Plaintiffs are entitled to these costs.

7 **4. Costs Related to Unsuccessful State Law Claims**

8 IGT argues that Plaintiffs' costs bill should be reduced by \$515.05-those costs associated
9 with medical expenses related to their unsuccessful state law claim for intentional infliction
10 of emotional distress. (Doc. # 339 17.) The court has determined that Plaintiffs' claims involve
11 a common core set of facts and are based on related legal theories, and therefore, Plaintiffs are
12 entitled to recover these costs.

13 **5. Costs for Unsubstantiated In-House Copies**

14 IGT argues Plaintiffs' costs should be reduced by \$2,883.00, for unsubstantiated in-
15 house copying costs. (Doc. # 339 17.) Plaintiffs argue that they are entitled, as a matter of law,
16 to recover their litigation expenses. (Doc. # 344 16.)

17 While Plaintiffs are entitled to litigation costs as the prevailing party under SOX, they
18 must document or otherwise substantiate their litigation costs. Without this information, the
19 court has no way to determine whether the copying costs were in fact incurred. The court will
20 not blindly rely on a reference to a number incurred for in-house copying costs without some
21 sort of documentation or declaration to support the request. Since Plaintiffs failed to properly
22 document their request for \$2,883 of in-house copying costs, the court will reduce their costs
23 award accordingly. Plaintiffs costs are reduced to \$131,953.94 (calculated by subtracting
24 \$2,883 from \$134,836.94).

25 **6. Conclusion on Costs**

26 Based on the foregoing and the court's review of the costs bill, the court finds that
27 Plaintiff is entitled to recover \$131,953.94 in costs reasonably incurred. This is calculated by
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1 taking Plaintiffs' request in the amount of \$135,358.85 and subtracting costs on appeal
2 (\$521.91) and unsubstantiated in-house copying charges (\$2,883).

3 C. PREJUDGMENT INTEREST

4 IGT argues that Plaintiffs should not be awarded prejudgment interest because their
5 damages were primarily comprised of their lost value of unvested stock options. (Doc # 339
6 18.) Alternatively, IGT appears to argue that any computation of prejudgment interest should
7 not include stock options at all. (*Id.* at 19.) Plaintiffs counter that the jury awarded each of
8 them "actual damages" with no categorization, and Plaintiffs are entitled to prejudgment
9 interest to make them whole. (Doc. # 344 17-18.)

10 While IGT argues that Plaintiffs' damages were primarily comprised of their lost value
11 of unvested stock options so that prejudgment interest should not be awarded, the court cannot
12 come to this conclusion. Plaintiffs are correct in pointing out that the jury awarded Plaintiffs
13 actual damages, without categorization. While the amount of actual damages awarded to
14 Shawn Van Asdale appears to reflect the amount offered by Plaintiffs' expert at trial for his
15 unvested stock options, the court cannot now substitute its judgment for that of the jury in
16 determining what amount of the total damages award is allocated to each category of damages
17 sought by Plaintiffs. Moreover, with respect to Lena Van Asdale, IGT's opinion that her
18 damages are primarily comprised of the lost value of unvested stock options is entirely
19 speculative because the jury simply awarded her actual damages in the amount of \$1,270,303,
20 without categorizing her damages. The court will not entertain IGT's request to guess which
21 portion of the jury's damages award is comprised of the lost value of unvested stock options,
22 especially when IGT did not object to the verdict form.

23 Plaintiffs, as prevailing party, are entitled to recover prejudgment interest as part of the
24 backpay remedy under Sox. 18 U.S.C. § 1514A(c)(B). "Prejudgment interest, of course, is an
25 element of complete compensation." *Loeffler v. Frank*, 486 U.S. 549, 558 (1988) (internal
26 quotation marks and citation omitted) (finding that Title VII authorizes prejudgment interest
27 as part of backpay remedy in suits against private employers). It "serves to compensate for
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1 the loss of use of money due as damages from the time the claim accrues until judgment is
2 entered." *West Virginia v. United States*, 479 U.S. 305, 311 fn. 2 (1987)(citation omitted).
3 Given the SOX's specific reference to an award of prejudgment interest and the direction that
4 Plaintiffs, as prevailing party, be awarded all relief necessary to make them whole, 18 U.S.C.
5 § 1514A(c), the court finds Plaintiffs are entitled to an award of prejudgment interest.

6 The court agrees with Plaintiffs that prejudgment interest on backpay awarded should
7 be calculated in accordance with 29 C.F.R. § 20.58(a), at the rate specified in the Internal
8 Revenue Code, 26 U.S.C. § 6621. Generally, the underpayment rate is the sum of the Federal
9 short-term rate plus 3 percentage points. 26 U.S.C. § 6221(a)(2). A "large corporate
10 underpayment" is "any underpayment of a tax by a C corporation for any taxable period if the
11 amount of such underpayment for such period exceeds \$100,000." 26 U.S.C. § 6621(c)(3)(A).
12 For large corporate underpayments, the rate is the Federal short-term rate plus 5 percentage
13 points. 26 U.S.C. § 6621(c). IGT does not dispute that the large corporate underpayment rate
14 applies, as Plaintiffs suggest. The Federal short-term rate is "rounded to the nearest full
15 percent (or, if a multiple of 1/2 of 1 percent, such rate shall be increased to the next highest
16 full percent)." 26 U.S.C. § 6621(b)(3).

17 In the absence of any objection by IGT that the large corporate underpayment rate
18 applies, the court finds that prejudgment interest in this matter is calculated using the Federal
19 short-term rate, plus 5 percentage points. 26 U.S.C. § 6621(c)(3)(A). The court takes judicial
20 notice of the Federal short-term rates and adds 5 percentage points for a large corporate
21 underpayment, as set forth in Exhibit 7 to Plaintiffs' motion. (Doc. # 323 Ex. 7.)

22 Plaintiff Shawn Van Asdale is awarded prejudgment interest from his termination date
23 of February 11, 2004, until the date judgment was entered, February 9, 2011, in the amount of
24 \$552,418.62. Plaintiff Lena Van Asdale is awarded prejudgment interest from her terminate
25 date of March 15, 2004, until the date judgment was entered, February 9, 2011, in the amount
26 of \$723,347.90.

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1 **D. TOTAL CALCULATION**

2 In sum, the court finds that the total amount of attorneys' fees awarded is \$1,009,620.
3 The total amount of costs awarded is \$131,953.94. The total amount of prejudgment interest
4 awarded is \$1,275,766.50 (\$552,418.62 to Shawn and \$723,347.90 to Lena). Therefore, the
5 total award of attorneys' fees, costs, and prejudgment interest is \$2,417,340.40.

6 The court orders IGT to pay the amount of \$2,417,340.40 to Plaintiffs no later than
7 thirty (30) days from the date of this order.

8 **IV. CONCLUSION**

9 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Attorneys' Fees, Costs, and
10 Prejudgment interest (Doc. #323-327) is **GRANTED** as set outlined above.

11 **IT IS HEREBY FURTHER ORDERED** that Plaintiffs' Motion to Strike (Doc. #354)
12 is **DENIED**.

13 DATED: May 24, 2011.

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15 UNITED STATES MAGISTRATE JUDGE
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